STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of GEORGE BEHNKE Trust.

HENRIETTA M. BEHNKE, Deceased,

Petitioner,

v

CITIZENS BANK,

Respondent,

and

RICHARD E. BEHNKE, FREDERICK D. BENHKE, and WANDA BEHNKE,

Appellants,

and

OLLIE M. BEHNKE,

Appellee.

UNPUBLISHED
January 14, 2003

No. 233677
Shiawassee Probate Court
LC No. 00-021237

Before: Murray, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Appellants appeal as of right the order providing that "the share of the Trust residue which would have gone to Clarence Behnke if he were living shall go to his surviving wife, [appellee] Ollie Behnke." We affirm.

On January 17, 1964, George W. Behnke executed his last will and testament. The will provided that upon George's death his wife, Henrietta Behnke, would become the trustee of George's estate for her lifetime. George directed, in relevant part, that, "Upon the death of my wife, Henrietta M. Behnke, I direct that the remainder of my estate shall be distributed as follows . . . [f]ive percent (5%) to my brother, Clarence Behnke. In case he is not living the share he

would receive, if living, shall go to his wife and if she is deceased then said share shall go to the issue of said Clarence Behnke, equally. . . ."

At the time the will was executed, George was married to Mae Behnke. Clarence and Mae had two children: Richard and Donald. On August 11, 1969, George died. On April 30, 1988, Mae predeceased Clarence. Clarence married his second wife, Ollie Behnke, on August 19, 1992. Clarence died on July 26, 2000, survived by Ollie, his son Richard, and Donald's two children, Wanda Behnke and Frederick Behnke.

Upon Henrietta's death,[1] Citizen's Bank, the successor trustee of the estate, filed a plan of proposed distribution of the will. Specifically, the plan provided for a proposed distribution of Clarence's five percent share to "Ollie Behnke, wife." George's son, Richard, and the children of George's deceased son Donald (Appellants), filed objections to the trustee's plan of proposed distribution. Appellants argued that the term "wife" as used in the will meant Clarence's wife who was living at the time the will was executed. Clarence's wife, Ollie, argued that the term "wife" was unambiguous and that the plain language of the will provided that she, as Clarence's surviving wife, should take Clarence's share under the will. The trial court determined that the will was not ambiguous and that "the wife is the wife and that's his current wife." On March 7, 2001, the court ordered that the share of the trust residue that would have gone to Clarence if he were living would go to Ollie.

Findings of the probate court sitting without a jury will be reversed only where clearly erroneous. *In re Woodworth Trust*, 196 Mich App 326, 328; 492 NW2d 818 (1992). A trial court's findings are clearly erroneous where this Court is left with a definite and firm conviction that a mistake has been made. *LaFond v Rumler*, 226 Mich App 447, 450; 574 NW2d 40 (1997).

The role of the probate court is to ascertain and give effect to the intent of the testator as derived from the language of the will. *Woodworth, supra* at 327. "Where there is no ambiguity, that intention is to be gleaned from the four corners of the instrument." *Id.* at 332. "Presence of an ambiguity requires a court to look outside the four corners of a will in order to carry out the testator's intent." *In re Kremlick Estate*, 417 Mich 237, 240; 331 NW2d 228 (1983). A patent ambiguity exists if an uncertainty concerning the meaning appears on the face of the instrument and arises from the use of defective, obscure, or insensible language. *Woodward, supra* at 327-328. A latent ambiguity exists where the language and meaning is clear, but some extrinsic fact creates the possibility of more than one meaning. *Id.* "An example would be where there is a clearly stated bequest to a beneficiary but extrinsic facts indicate that two individuals answer to the beneficiary's name." *In re Norwood Estate*, 178 Mich App 345, 348; 443 NW2d 798 (1989).

Appellants concede that the will does not contain a patent ambiguity. They argue, instead, that the will contained a latent ambiguity because two individuals answer to the term "wife." We disagree.

The Testator's intent must be determined at the time the will was executed. *Morrow v Detroit Trust Co*, 330 Mich 635, 642; 48 NW2d 136 (1951). George's will provided that if

[1] Nothing in the lower court file indicates the exact date of Henrietta's death.

Clarence was not living at the time of Henrietta's death, the share he would receive "shall go to his wife."[2] "Wife" has been defined as "a woman married to a man." *Jacobs v Michigan Mutual Ins Co,* 106 Mich App 18, 22; 307 NW2d 693 (1981). The common definition of the term "wife" is "a woman joined in marriage to a man and considered as his spouse." *Random House Webster's College Dictionary (*1992). Applying the plain and ordinary meaning of the term "wife," Ollie was Clarence's wife at the time of Henrietta's death. The fact that Clarence had another wife before Ollie and before the interests in the residual estate vested does not create a latent ambiguity. Had George intended to specifically provide for Mae rather than for the "wife" of Clarence, the will could have contained limiting language or could have specifically identified Mae as Clarence's wife. Because the plain language of the will provides for Clarence's "wife," the trial court did not clearly err in determining that Clarence's portion of the residual share vested in Ollie upon the expiration of Henrietta's life estate.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

[2] If the wife also was deceased, Clarence's share would "go to the issue of Clarence Behnke, equally. . . ."